

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CHAVEZ GOMEZ,

Petitioners,

v.

19-CV-6841 MAT
ORDER

WILLIAM P. BARR, Attorney General
United States of America, KEVIN
MCALEENAN, Secretary, United States
Department of Homeland Security, and
JEFFREY SEARLS, Field Office Director,
Buffalo Federal Detention Facility,

Respondents.

Pro se Petitioner, Jose Chavez Gomez, is a civil immigration detainee currently held at the Buffalo Federal Detention Facility. Petitioner claims that he is being detained in U.S. Immigration and Customs Enforcement custody, pending removal proceedings, in violation of the U.S. Constitution. *See generally* 8 U.S.C. § 1231(a)(1) (Attorney General, succeeded by the Secretary of Homeland Security for this purpose, must remove alien within 90 days of final order of removal), (a)(6) ("An alien ordered removed . . . may be detained beyond the [90-day] removal period . . ."); *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001) (presumptive limit to reasonable duration of detention under § 1231(a)(6) is six months); *see also* 8 U.S.C. § 1226 (a),(c) (detention of aliens); *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (reserving determination of merits of due process arguments regarding extended detention without bond). Petitioner seeks relief under 28 U.S.C. § 2241, and he has paid the \$5.00 filing fee.

ORDER

IT IS HEREBY ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve an **answer** responding to the allegations in the Petition; and it is further

ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve, in addition to their answer, a **memorandum of law** addressing each of the issues raised in the Petition and including citations to supporting authority and applicable sections of the Immigration and Nationality Act; and it is further

ORDERED that within **45 days of the date of this Order**, instead of their answer, Respondents may file a **motion to dismiss** the Petition, accompanied by appropriate exhibits demonstrating that an answer to the Petition is unnecessary; and it is further

ORDERED that Petitioner shall have **25 days after his receipt of the Respondents' answer or motion to dismiss** to file a written response; and it is further

ORDERED that the Clerk of Court shall serve a copy of the Petition, together with a copy of this Order, electronically via a Notice of Electronic Filing to the United States Attorney's Office, Western District of New York at USANYW-Immigration-Habeas@usdoj.gov.

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENTS.

SO ORDERED.

Dated: Dec 3, 2019
Rochester, New York


MICHAEL A. TELESKA
UNITED STATES DISTRICT JUDGE